

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37470

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| STATE OF IDAHO, |) | 2010 Unpublished Opinion No. 707 |
| |) | |
| Plaintiff-Respondent, |) | Filed: November 16, 2010 |
| |) | |
| v. |) | Stephen W. Kenyon, Clerk |
| |) | |
| MICHAEL D. WESTMAN, |) | THIS IS AN UNPUBLISHED |
| |) | OPINION AND SHALL NOT |
| Defendant-Appellant. |) | BE CITED AS AUTHORITY |
| |) | |

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Patrick H. Owen, District Judge.

Judgment of conviction and unified sentence of ten years, with a minimum period of confinement of five years, and concurrent indeterminate terms of ten years for two counts of burglary and concurrent indeterminate terms of ten years for two counts of burglary and two counts of grand theft, affirmed; order denying I.C.R. 35 motion for reduction of sentences, affirmed.

Molly J. Huskey, State Appellate Public Defender; Spencer J. Hahn, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge; GRATTON, Judge;
and MELANSON, Judge

PER CURIAM

Michael D. Westman pled guilty to four counts of burglary, I.C. §§ 18-1401 and 18-204, and two counts of grand theft, I.C. §§ 18-2403(1), 18-2407(1)(b), and 18-204. In exchange for his guilty pleas, thirty-nine additional counts were dismissed. The district court sentenced Westman to a unified term of ten years, with a minimum period of confinement of five years, and a concurrent indeterminate term of ten years for the two counts of burglary. The district court also sentenced Westman to concurrent indeterminate terms of ten years for two counts of burglary and two counts of grand theft and ordered that these sentences run consecutive to the

other two burglary sentences. Westman filed an I.C.R. 35 motion, which the district court denied. Westman appeals.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

Next, we review whether the district court erred in denying Westman's Rule 35 motion. A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *Lopez*, 106 Idaho at 449-51, 680 P.2d at 871-73. Upon review of the record, we conclude no abuse of discretion has been shown.

Therefore, Westman's judgment of conviction and sentences, and the district court's order denying Westman's Rule 35 motion, are affirmed.